

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MICHAEL FAULK,)
)
Plaintiff,) Case No. 4:18-CV-308
v.)
)
CITY OF ST. LOUIS, et al.,)
)
Defendants.)

**DEFENDANT LT. COL. LAWRENCE O'TOOLE'S
MOTION TO DISMISS COUNTS I, II, V, VIII, IX, X AND XII
OF PLAINTIFF'S FIFTH AMENDED COMPLAINT**

COMES NOW Defendant Lt. Col. Lawrence O'Toole ("O'Toole") and moves this Court to dismiss Counts I, II, V, VIII, IX, X and XII for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6) ("FED. R. CIV. P. 12(b)(6)"). In support, O'Toole states the following:

1. Plaintiff fails to state a claim in Counts I, II, V, VIII, IX, X and XII of his Fifth Amended Complaint (doc. 126) against Defendant O'Toole upon which plaintiff may obtain relief from this Court or any other. FED. R. CIV. P. 12(b)(6).
2. Taking plaintiff's allegations against O'Toole as true, and construing those allegations in a light most favorable to plaintiff, plaintiff fails to sufficiently allege facts entitling plaintiff to relief. *Kottschade v. City of Rochester*, 319 F.3d 1038, 1040 (8th Cir. 2003).
3. Defendant O'Toole submits herewith a memorandum in support of his motion, which sets out the relevant arguments and citations to authority on which Defendant relies.

WHEREFORE, Defendant O'Toole prays the Court grant his Motion to Dismiss for Failure to State a Claim with prejudice, and for any further relief the Court deems just and reasonable.

Respectfully submitted,

JULIAN BUSH,
City Counselor

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CERTIFICATE OF SERVICE

I hereby certify that on **March 30, 2020** the foregoing Motion was served via the Court's electronic filing system upon all counsel of record.

/s/ Erin K. McGowan